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FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	ORIGINAL DATE <u>2-28-07</u>	LAST UPDATED <u>2-28-07</u>	HB _____
SHORT TITLE <u>Domestic Well Points of Diversion</u>	SB <u>901/SJCS</u>	ANALYST <u>Woods</u>	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

No Responses Received From

Office of the Attorney General (OAG)¹

SUMMARY

Synopsis of Bill

Senate Judiciary Committee substitute for Senate Bill 901 seeks to enact a new section of the Sanitary Projects Act, as follows:

A. A person may change the point of diversion of water diverted from a well permitted for domestic use purposes pursuant to Section 72-12-1.1 NMSA 1978, or a well permitted before June 20, 2003 pursuant to Section 72-12-1 NMSA 1978 for the same domestic use purposes, into a well owned and operated by an association in accordance with the provisions of Subsections B through D of this section, provided that the well is located within the physical service area of the association.

B. The change in point of diversion shall be made upon application to the state engineer and upon a showing that the change will not impair existing rights and will not be contrary to conservation of water within the state and will not be detrimental to the public welfare

¹ Comments requested from OAG on 2-27-07.

of the state. The application may be granted only after notice and opportunity for hearing are provided as prescribed by Subsection D of Section 72-12-3 NMSA 1978.

C. An association that allows the point of diversion of a domestic well to be changed to that of an association well shall file with the state engineer a map depicting the boundaries of the association's physical service area and updated maps of any expansion of the boundaries of the association's physical service area.

D. Only domestic wells located within the boundaries of the physical service area of the association that were permitted prior to the time the association files its physical service area boundaries or an update of those boundaries with the state engineer may have their points of diversion changed to the association's point of diversion, and the state engineer shall not issue permits pursuant to Section 72-12-1.1 NMSA 1978 for new domestic wells within those areas once the association files its service area boundary map or updated map with the state engineer.

E. For the purposes of this section, "physical service area" is the area defined by the association, based on factors determining the capacity to provide water, including, but not limited to, the location of existing lines, adequacy of existing infrastructure and the availability of water rights, and approved by the state engineer."

The effective date of the provisions of this act is July 1, 2007, and there is no appropriation attached to the legislation.

FISCAL IMPLICATIONS

The Office of the State Engineer (OSE) indicates no fiscal implications.

SIGNIFICANT ISSUES

OSE notes that the legislation allows for the change in point of diversion of a domestic well permitted under § 72-12-1 and § 72-12-1.1 to a community water association. The application to change the point of diversion for water from a domestic well to a water association's well would employ the full due process protections to existing water rights owners, such as publication of notice of the application, the opportunity to protest, and findings by the state engineer on impairment, conservation, and public welfare. Further that the legislation would promote the development of community water associations and encourage residents within the service area of such associations to hook up to the association.

OSE additionally notes that, at the same time, the legislation would protect against excessive depletions to aquifers from domestic well use by limiting their use in a community water association's service area. Once a water association defines the boundary of its service area by filing its map with the state engineer, no new domestic well permits could be issued by the state engineer in the service area. If the intent of SB 901 is to improve the availability of potable water and reduce reliance on individual domestic wells in an area served by a community water association, then this bill accomplishes that goal by prohibiting the drilling of any new domestic wells permitted within the boundaries of an established service area of an association. This prohibition achieves a statutory implementation of the state engineer's regulations.

OSE opines that the legislation does not violate the general rule that rights permitted under § 72-12-1 and § 72-12-1.1 are not transferable. The phrase “water right transfer” typically refers to a transaction in which ownership of a water right changes hands and the water right is moved by changing its point of diversion and place and purpose of use. The general rule against the transferability of § 72-12-1 and § 72-12-1.1 rights derives from the fact that domestic well permits under those statutes are issued without any of the protections normally accorded existing water right owners such as publication of notice, the opportunity to protest and have a hearing, and a state engineer finding of no impairment necessary for the issuance of the permit. Under SB901/SJCS, only the point of diversion is being changed. SB901/SJCS does not authorize change in the owner of the permit, nor does it authorize change in the purpose of use or and place of use, so it creates the appearance that there is no transfer of any right; hence, the general rule described above is not violated. As a result, OSE concludes that it appears that SB901/SJCS would not result in the transfer of domestic well rights to community water associations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

OSE indicates relationships to HB726, HB884, and SB755.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE states, “Domestic well owners will not be able to change their points of diversion permitted under § 72-12-1 and § 72-12-1.1 to a community water association.”

BFW/csd